

**STATE OF MICHIGAN**  
**IN THE SUPREME COURT**

STAND UP FOR DEMOCRACY,

Plaintiff/Appellee,

Supreme Court No. 145387

vs.

Court of Appeals Case No. 310047

BOARD OF STATE CANVASSERS, RUTH  
JOHNSON, SECRETARY OF STATE,

Defendants

and

CITIZENS FOR FISCAL RESPONSIBILITY,

Intervening Defendant/Appellant.

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**INTERVENING DEFENDANT/APPELLANT  
CITIZENS FOR FISCAL RESPONSIBILITY'S  
SUPPLEMENTAL BRIEF IN SUPPORT OF  
APPLICATION FOR LEAVE TO APPEAL**

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Per this Court's July 11, 2012 Order, Intervening Defendant/Appellant Citizens for Fiscal Responsibility ("CFR") submits this Supplemental Brief in Support of its Application for Leave to Appeal in order to answer the questions posed by Chief Justice Young and Justice Markman.

## **I. QUESTIONS BY CHIEF JUSTICE YOUNG**

- A. First, I would like the parties to address the definitions of "point" and "type" as they stood at the time the Legislature enacted MCL 168.482 in 1954 and amended it in 1965, specifically, whether the "point" measurement of "type" requires a size measurement of the entire printer's block rather than of the actual character produced by the block. See, e.g., *Webster's New International Dictionary of the English Language, Second Edition* (1948); *Webster's Third New International Dictionary of the English Language Unabridged* (1965).**

In 1954, when the Legislature first enacted the Michigan Election Law, MCL 168.1, et seq, petitions and other printed materials, such as newspapers and books, were produced by what is called a printing or letter press. Exhibit A, Affidavit of David W. Campbell, at ¶ 5, Exhibit 1. To form the words, printers used moveable type or "type," meaning a set of individual letter blocks that could be moved to any location to spell a word. *Id.* at ¶ 6, Exhibit 2. The printer's blocks were measured by points or picas, depending on the type of block used. *Id.* at ¶ 7. A point is a unit of measurement used to specify type size and measured in 1954, as it does now, at .0138 or 1/72 of an inch. *Id.* at ¶ 3. To accommodate both capital and lower case letters on the same size block, including ascenders (type that goes above most letters, such as an apostrophe (') or quotation mark (")) and descenders (type that goes below most letters such as a "y") not all type size measures the full size of the block. *Id.* at ¶ 8. Boldfaced capital letters, as is required by Michigan Election Law for the heading of a petition, do, however, use most of the size of a printer's block. *Id.*

MCL 168.482(2) prescribes the format for the heading of initiative and referendum petitions as follows:

If the measure to be submitted proposes a constitutional amendment, initiation of legislation, or referendum of legislation, the heading of each part of the petition shall be printed in capital letters in 14-point boldfaced type.

Neither the term "point" nor "type" are or ever have been defined by Michigan Election Law. It is a fundamental rule of statutory construction that unless defined in the statute, a word or phrase used in a statute should be accorded its plain and ordinary meaning. MCL 8.3a, *Cain v Waste Mgt, Inc (After Remand)*, 472 Mich 236, 245; 697 NW2d 130 (2005). Technical terms are to be accorded their peculiar meanings. MCL 8.3a, *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008). Under settled rules of statutory construction, this Court may consult dictionaries to ascertain the meaning of a word. *Cain*, 472 Mich at 247.

The dictionary definition of "point" has not changed since 1954, when § 482 was first enacted. In 1948, "point" referred to the "point system" in the printing context. "Point System" was defined by *Webster's New International Dictionary of the English Language, Second Edition, Unabridged* (1948), in pertinent part as follows:

*Type founding.* A system according to which the various sizes of type bodies, leads, etc., bear a fixed and simple relation to one another. The point system is based upon the pica, or 12-point, body, which when set solid makes 6 vertical lines for 72 points to the inch. This body is divided into twelfths, called *points*. The point size of any type may be determined by dividing 72 by the number of lines per column inch. Thus, type making 12 lines per column inch is 6 point; 9 lines, 8 point. The value of the point is .013837 inch, or nearly 1/72 inch.

"Point System" was similarly defined several years later in *Webster's New International Dictionary of the English Language, Second Edition, Unabridged* (1960). Point is likewise defined today in precisely the same manner. See, e.g. *Random House Webster's Unabridged Dictionary* (2001)("A unit of type measurement equal to 0.013835 inch (1/72 inch) or 1/12 pica.").

The term "type" was defined in 1948 in relevant part, as follows:

*Print.* a) A rectangular block, usually of metal or wood, having its face so shaped as to produce in printing a letter, figure, or other character; - often used attributively; as *type* matter; *type* body; *type* face; *type* design; *type* gauge, *etc.* b) Such blocks or the letter or characters impressed, collectively.

"Type" was similarly defined in 1960, as set forth below:

a) A rectangular block, usually of metal or wood, having its face so shaped as to produce, in printing, a letter, figure, or other character; - often used attributively; as *type* matter; *type* body; *type* face. b) Such blocks, or the letters or characters impressed, collectively. The different alphabets of body type used in book composition consist of roman CAPITALS, SMALL CAPITALS and lower-case letters, and *italic* CAPITALS AND *lower-case* letters, with accompanying figures, points, accents, *etc.*, in all over 230 characters. A single type consisting of two or more letters or characters united (as e, fi, ffi) is a *ligature*.

Today, the definition of "type" remains substantially unchanged, but also includes characters electronically produced by a computer. See, e.g., *Random House Webster's Unabridged Dictionary* (2001).

The question posed is whether the Legislature intended the heading, which is required to be printed in letters measuring 14-point type, to be measured by the size of the printer's block or by the actual size of the letters printed. It would be entirely illogical for the Legislature to have considered the size of the printer's block when it enacted Section 482, because it is only the actual printed type or letters that the signer can actually see and read. It would have been just as easy in 1954 as it is today to print a heading in 14-point type, *i.e.*, 14/72 of an inch, and to measure the type to ensure compliance with the statutory requirements. Section 482 requires the heading to be printed in *letters* measuring 14 points, not just "printed" in 14-point type, strongly evidencing the Legislature's intent to require the *letters* to measure 14 points. Indeed, a plain reading of this section can lead to no other conclusion.

Regardless, even if this Court were to conclude that the printer's block is the proper measurement, and that the block itself need only measure 14 points, Plaintiff's Petition is still noncompliant. A C-thru ruler, which is a graphic arts ruler used by printers to measure points, picas, and type size by E-scale, is the proper and, indeed, only viable means available to properly measure Plaintiff's Petition. Exhibit A, Campbell Affidavit at ¶ 9. Mr. Campbell used such a ruler to measure Plaintiff's Petition heading based on points, *i.e.*, 1/72 of an inch. *Id.* This ruler can also measure type size based on an E-scale, which measures slightly smaller than points because it adjusts to accommodate for the size of a printer's block. *Id.* at ¶ 10. Type measuring 14 points on an E-scale ruler is therefore consistent with that which would be produced on a 14-point printer's block, and slightly less than 14 points as measured by 1/72 of an inch. *Id.*

Therefore, even if one were to measure using a 14-point printer's block, Plaintiff's Petition would still have to satisfy an E-scale measurement of 14 points. At best, Plaintiff's Petition measures 12 points on the E-scale ruler, as the Court of Appeals concluded, meaning it is actually less than 12 points on a point measurement system, and could not have been printed by a 14-point printer's block.

Regardless, it would make no sense for the Legislature to require letters to measured 14 point, if it instead meant that the printer's block should measure 14 points, and yet chose not to say so. It is well settled that every word and phrase of a statute should be given meaning and not treated as mere surplusage or rendered nugatory. *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002).



- B. Second, I would like the parties to address whether these definitions of "point" and "type" continue to control the interpretation of MCL 168.482(2), notwithstanding subsequent amendments of the statute in 1993 and 1998 that did not alter the terms "point" and "type" within that subsection.

In 1954, the Michigan Legislature first enacted the Michigan Election Law, 1954 PA 116, MCL 168.1, et seq. Section 482 set forth the form requirements for initiative and referendum petitions in pertinent part as follows:

The size of all petitions mentioned in this section shall be 8 ½ inches by 13 inches. If the measure to be submitted proposes a constitutional amendment, initiation of legislation, or referendum of legislation, the heading of each part of the petition shall be prepared in the following form and printed in capital letters and type of the approximate size set forth:

INITIATIVE PETITION  
AMENDMENT TO THE CONSTITUTION  
OR  
INITIATION OF LEGISLATION  
OR  
REFERENDUM OF LEGISLATION  
PROPOSED BY INITIATIVE PETITION

The words "amendment," "initiation of legislation" or "referendum of legislation" printed in 14-point black face type, shall precede the title.

Exhibit B. In 1965, Section 482 was amended to read as follows:

The size of all petitions mentioned in this section shall be 8 ½ inches by 13 inches. If the measure to be submitted proposes a constitutional amendment, initiation of legislation, or referendum of legislation, the heading of each part of the petition shall be prepared in the following form and printed in capital letters in 14-POINT BOLD FACE TYPE:

INITIATIVE PETITION  
AMENDMENT TO THE CONSTITUTION  
OR  
INITIATION OF LEGISLATION  
OR  
REFERRENDUM OF LEGISLATION  
PROPOSED BY INITIATIVE PETITION

~~The words "amendment," "initiation of legislation" or "referendum of legislation" printed in 14 point black face type, shall precede the title.~~

*Id.*

Section 482 was again amended both in 1993 and 1998.<sup>1</sup> Exhibit C and D. In 1993, Section 482 was amended to require the use of 8 ½ by 14 inch paper instead of 8 ½ by 13 inch paper and required the heading to be in "boldface" rather than "bold face" type. Exhibit C. In 1998, Section 482 was again amended to read "boldfaced" instead of "boldface." Exhibit D.

With respect to the deletion of the language permitting type size in the "approximate type size set forth," under settled principles of statutory construction this amendment must be deemed to have meaning. It is generally recognized that "the mere fact that the legislature enacts an amendment indicates that it thereby intended to change the original act by creating a new right or

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<sup>1</sup>Although not directly relevant to this question, it certainly is to the issues before the Court and thus worth noting, that the language in Section 544d relied upon by Plaintiff as purportedly creating a "substantial compliance" exception was not included in the Michigan Election Law until a 1975 amendment. The purpose of this section was to allow a petition to be circulated county-wide, rather than just within a city or township, which was deemed too restrictive for state-wide races. The law permitted the Secretary of State to create a county-wide form in compliance with Section 482, and to add necessary provisions to permit circulation within a county. The substantial compliance language was therefore included simply to give the Secretary some leeway in this regard, not to change the requirements of Michigan Election Law or otherwise establish a "substantial compliance" exception. See, Exhibit E, Richard Austin ("The bill authorizes the Secretary of State to develop a petition form specifically for circulation throughout a single county. It is intended that the form will be similar to the regular petition form but will require additional information necessary to check petitions circulated throughout a single county.")

withdrawing an existing one." *Kammer Asphalt Paving Co, Inc v East China Twp Schools*, 443 Mich 176, 193; 504 NW2d 635 (1993) (citation omitted), see also *Bush v Shabahang*, 484 Mich 156, 169-70; 772 NW2d 272 (2009) ("[T]his Court must assume that an express legislative change denotes either a change in the meaning of the statute itself or a clarification of the original legislative intent of the statute. We cannot assume that the change means nothing at all."). The Michigan Election Law expressly provides that the heading "shall" be in 14-point boldfaced type. The change from "approximate size set forth" to "shall" reflects the Legislature's obvious intent to require mandatory adherence to the type size requirements set forth therein.

The term "point" has been the required measure for type size since the original enactment of Michigan Election Law in 1954. Subsequent amendments therefore do not alter its meaning in the context of this statute. In *Wade v Farrell*, 270 Mich 562, 567; 259 NW 326 (1935), this Court unanimously held:

When a statute continues a former statute law, that law common to both acts dates from its first adoption, and only such provisions of the old act as are left out of the new one are gone, and only new provisions are new laws. Where an act is amended . . . the part of the original act which remains unchanged is considered as having continued in force as the law from the time of its original enactment and the new portion as having become the law only at the time of the amendment.

The rule quoted in *Wade*, mirrors the rule enunciated in 1 A Sutherland, Statutory Construction (7<sup>th</sup> Ed), Section 22.35:

The phrase "this act" in a section as amended generally refers to the whole act, and not merely the amending act. Words used in the unamended sections are considered used in the same sense in the amendment. And accordingly, a change in phraseology indicates a change in meaning. The legislature is presumed to know the prior construction of the original act or code, and if previously construed terms in the unamended sections are used in the amendment, the legislature intended to adopt the prior construction of those terms.

Likewise, in *People v Evans*, 434 Mich 314; 454 NW2d 105 (1990), this Court stated as follows:

[Generally, an] amendment [of a statute] is to be considered as part of the original act, and the entire act as amended . . . be given the construction as if the amendment was a part of the original act.

*Id.* at 324 (quoting *People ex rel Attorney General v Michigan Central R Co*, 145 Mich 140, 150; 108 NW 772 (1906)); see also *Nemeth v Abonmarche Dev, Inc*, 457 Mich 16, 43; 576 NW2d 641 (1998) (Legislature is presumed to know the provisions of existing legislation when it enacts new legislation).

There is no definition of point other than it equals 1/72 of an inch. It is the same definition today as existed in 1954 and 1965 and, therefore, should continue to be interpreted and applied in that manner. Had the Legislature intended something other than this recognized and standardized unit of measurement, it certainly could have stated so when it amended § 482 in 1993 and again in 1998. Because it did not do so, the meaning of this term applies as it is commonly understood, meaning the printed letters must measure 14 points.

**C. Finally, if the original definitions of "point" and "type" control the interpretation of MCL 168.482(2) today, I would like the parties to address how the Court is to determine whether the computer font used in this case complies with those definitions.**

There is only one method for determining whether Plaintiff's Petition complies with Section 482's 14-point requirement, which is to measure the type size using a ruler that measures points. Plaintiff's Petition heading unquestionably fails to measure 14 points and, in fact, is closer to 10 points using a C-thru or other type of ruler that measures points. Exhibit A, Campbell Affidavit, at ¶ 9. If, however, this Court were to use the printer's block size as the methodology for measuring the header on Plaintiff's Petition, it should utilize an E-scale measurement, which accommodates for the spacing of a printer's block. *Id.* at ¶ 10. Plaintiff's

Petition still fails to measure 14 points on an E-scale, as the Court of Appeals concluded. *Id.* at ¶¶ 12-14; Court of Appeals Opinion, p 12, n 10.

CFR had Plaintiff's Petition heading printed using a letter press of the sort used in 1954, when the Michigan Election Law was first enacted, using two different types of 14-point printer's blocks, in type styles available at the time. Exhibit A, Campbell Affidavit at ¶ 11, Exhibit 3. A comparison of the two headings produced by the letter press using 14-point printer's blocks to Plaintiff's Petition is revealing. *Id.* at ¶ 12, Exhibit 3. Indeed, Plaintiff's Petition heading is a much smaller type size, clearly observable by the naked eye. *Id.*

Because printers generally do not use printer's blocks anymore, it would only be logical to conclude that the appropriate measurement method is to measure the printed letters in points, consistent with a plain reading of the statute. Computer type size (with all its variations) is simply not a reliable source of measurement. Microsoft readily acknowledges that type size varies depending on font style used and that the browsers adjust depending on different type styles and, indeed, the user can even change base font sizes. See, e.g., Exhibit F. Having the computer measure points depending on which font style is used would lead to wide and non-standardized variances in the type size used for petitions, contrary to the Legislature's mandate that such petitions be prepared uniformly and be easy to read. For example, a portion of the heading is reproduced below, all in 14-point type, but using different font styles:

REFERENDUM OF LEGISLATION (Times New Roman)

REFERENDUM OF LEGISLATION (Arial)

REFERENDUM OF LEGISLATION (Calibri)

REFERENDUM OF LEGISLATION (Verdana)

REFERENDUM OF LEGISLATION (Papyrus)

The fact that computer font styles produce varied type sizes is hardly in dispute. The United States Seventh Circuit Court of Appeals, for example, has prepared user guidelines concerning typography as it relates to briefing requirements, recognizing that inconsistent results can easily occur if one were to rely on computer programs for sizing, stating as follows:

"Point" is a printing term for the height of a character. There are 72 points to the inch, so capital letters of 12 point types are a sixth of an inch tall. This memorandum is in 12-point type. Your type may be larger than 12 points, but it cannot be smaller. All word processing packages can produce 12 point type. *Word processing and page layout programs can expand or condense the type using tracking controls, or you may have access to a condensed version of the face (such as Garamond Narrow). Do not use these. Condensed type is not permitted.* It offers no benefit to counsel under an approach that measures the lengths of briefs in words rather than pages and it is to your advantage to make the brief as legible as possible. [Emphasis supplied].

The Seventh Circuit then provides examples of 9 through 14-point type, including 12-point type and 12-point type "condensed," which is deemed "not acceptable" and is clearly smaller than 12-"noncondensed" point type. See Exhibit G.

## II. QUESTIONS BY JUSTICE MARKMAN

- A. First, in addressing the meaning of the terms "point" and "type," See e.g. Webster's New Collegiate Dictionary (2d ed) (1960), what is the significance, if any, of the context in which those terms are used, i.e., within a statute that provides that the heading of the petition "shall be . . . *printed in capital letters in 14-point boldface type*"? MCL 168.482(2) (emphasis added).

CFR respectfully submits that the terminology used in the Michigan Election Law was very specific as to what was required, and a plain reading of the statute clearly indicates the Legislature's intent. The requirement imposed by Section 482 is that the heading be printed in *letters* that measure 14-point boldfaced type. The only logical way to read this provision is that the letters themselves have to measure 14 points, otherwise the Legislature's specification that the heading has to be printed (terminology as used in 1954) in letters (meaning we are to

measure the size of the letters) would be rendered meaningless. It is well settled that this Court will enforce plain statutory language if it is unambiguous "without further judicial construction or interpretation." *People v Phillips*, 468 Mich 583, 589; 663 NW2d 463 (2003); see also *Briggs Tax Service, LCC v Detroit Public Schools*, 485 Mich 69, 76; 780 NW2d 753 (2010). A Court should consider the plain meaning of a "critical word or phrase" as well as its "placement and purpose in the statutory scheme." *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999). Courts must apply the plain and unambiguous meaning of a statute as written, give effect to every provision, and not render language meaningless. *Danse Corp v City of Madison Hts*, 466 Mich 175; 644 NW2d 721 (2002). "Under the doctrine of *noscitur a sociis*, a phrase must be read in context. A phrase must be construed in light of the phrases around it, not in a vacuum. Its context gives it meaning." *Koontz v Ameritech Services, Inc*, 466 Mich 304, 318; 645 NW2d 34 (2002).

It would be entirely inconsistent with settled principles of statutory construction to conclude that the printer's block should be measured rather than the letters themselves. As a threshold matter, the statute does not say printer's block, it says letters, so no further construction is permitted. Further, the Legislature would never permit petition proponents to undermine the process by using random size blocks that may or may not print the proper size type. It would also be impossible for the Secretary of State or Board of Canvassers to enforce or otherwise objectively measure and determine compliance with the statute, given variances in printer's blocks, whereas a simple point measurement of letters is quite simple and had uniform application.

**B. Second, assuming that the statute requires a measurement of the entire printer's block, rather than of the printed character itself, how is such a block to be measured and what are the sizes of the block at issue in this case?**

As discussed in response to Chief Justice Young's Question #1, if the statute requires a size measurement of the printer's block, it is measured by points, meaning the entire size of the block would be 14 points. If Plaintiff had used a letter press to print its Petition, the size of that block would have been 12 points. We know that because the heading of Plaintiff's Petition measures 12 points on an E-scale ruler. See Exhibit A, Campbell Affidavit at ¶¶ 11-14. Measurement of the printed letters using a point scale, however, is closer to 10 points. *Id.* at ¶ 14. Furthermore, there are no blocks at issue in this case because Plaintiff's Petition was not printed utilizing printer's blocks. The only relevant measure, therefore, is the size of the printed letters themselves.

**C. Third, assuming that the printer's block is determinative, would a 3 point font, for example, be sufficient under the statute as long as the blank space between the two lines is sufficiently large?**

A 3-point font could not possibly comply with the Legislature's intent, which was to provide the heading in the largest type size of any portion of the petition. The heading is in many respects the most important part of the petition because it identifies what the proponents are seeking to do and is very often the only part of a petition a potential signer actually reads. That the Legislature deemed the heading to be the most important section of the petition is self-evident, because it required it to be printed in a larger type size than any other part of the petition. A 3-point letter would be unreadable and would clearly not comply in any respect with the statute's requirement in this regard or the Legislature's intent, which is precisely why the proper measurement should focus on the letters actually printed, not a printer's block that may or may not have been used to print the petition.



**D. Fourth, what legislative purpose would be served under MCL 168.482(2) with a type size requirement that measures the size of a printer's block compared to a requirement that measures the size of the actual printed character?**

There would be no legislative purpose served by requiring measurement of a printer's block rather than the actual printed character. Indeed, had the Legislature indicated that the measurement should be of the printer's block, Section 482 most certainly would have been amended in this regard, given such blocks are now rarely used. Because, however, it is just as easy now as it was in 1954 to measure whether a printed letter measures 14 points, there has been no need to amend the statute's requirements.

**III. CONCLUSION**

For the foregoing reasons, and for those set forth in the Application for Leave to Appeal, Intervening Defendant Citizens for Fiscal Responsibility respectfully requests that this Honorable Court:

- 1) Resolve the conflict between the two panels of the Court of Appeals;
- 2) Overrule *Bloomfield Charter Twp v Oakland Co Clerk*, 253 Mich App 1; 654 NW2d 610 (2002);
- 3) Adopt the reasoning of Parts I-IVA of the Michigan Court of Appeals' June 8, 2012 *per curiam* opinion.
- 4) Reverse the Order of Mandamus; and

5) Order such other relief as this Court deems equitable and just.

Respectfully submitted,

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Dated: July 18, 2012

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